

Subject: Re: following up on our off-the-record conversations

From: Barry Coburn <barry@coburngreenbaum.com>

Date: 3/6/2018 2:38 PM

To: "Benner, Katie" <katie.benner@nytimes.com>

CC: Marc Lacey <marc.lacey@nytimes.com>, diane.brayton@nytimes.com,
Patrick.healy@nytimes.com

BCC: Barry Coburn <barry@coburngreenbaum.com>

ON DEEP BACKGROUND::

Hi Kate -- Thanks for your quick response. The language you provided is not entirely accurate, and unfortunately we cannot provide specific corrective information for the reasons I stated. It is, however, the case, as I indicated yesterday on the phone, that information was gathered and a finding made that is inconsistent with the proposition that unwelcome conduct occurred. Under these circumstances, we respectfully submit to you that it would be unfair and inappropriate to include any reference in the article to allegations of improper conduct by Mr. Kinsey. Best regards, Barry

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On Tue, Mar 6, 2018 at 10:53 AM, Benner, Katie <katie.benner@nytimes.com> wrote:

Hello Barry, Marc, Diane and Patrick!

Thank you so much for this. I was never upset or angry, but only matter of fact. I am not a very upset person in general. :) But sadly I have to ask questions that sometimes cause others to raise their voices and feel defensive. Apologies if that happened yesterday. It is never my intention. I get along with everyone I speak with.

As I said yesterday, I'm happy to use the sourcing that you have suggested.

Can we be more specific and say:

After the OIG launched its investigation that Mr. Kinsey filed an appeal with the Merit Systems Protection Board regarding the disciplinary action imposed against him arising out of his

relationship to former CCS employee Ms. TenBroek

During the course of that investigation, the MSPB reviewed tapes of interviews conducted by the OIG and did its own independent investigation. That process has closed and found that Mr. Kinsey did not act in a way that violated departmental rules (or whatever language you choose here to show that the MSPB exonerated Mr. Kinsey.)

(The appeal was confirmed by a Dec 1 email sent by Jill Weissman asking that CCS staff not destroy, delete, change or remove any information relevant to the proceeding.)

The story is not based on a single court filing. I'm sorry that you have that impression. It's based on the case, as well as interviews and other documents. The main allegations, which I've shared with you, are all included in that court filing, so there will be no surprises in the story.

Again, many thanks for your sincere and helpful calls. It has been really nice working with you and the process should hopefully wrap up soon!

All best!
Katie

On Tue, Mar 6, 2018 at 8:37 AM, Barry Coburn <barry@coburngreenbaum.com> wrote:

> Hi Katie, I'm following up on our off-the-record conversation yesterday.
> Thank you for allowing us to talk with you off the record and to consider
> switching our status. You can convert my comments, including the contents
> of this note, from "off the record" to "deep background," so long as you
> source me only as "a person familiar with the DOJ investigation of the
> incident" and do not include other directly or indirectly identifying
> information about me or our client.
>
> It seemed like you became upset and angry when we talked yesterday,
> particularly when you said that you hoped I was not threatening you (I
> assume you meant with a possible defamation action). Of course I am not
> threatening you with anything. I simply think it is important for the Times
> to know, before it goes to press with pejorative information about a
> long-time lawyer in public service (or anyone for that matter), based on one
> document in a court file, that there is substantial contrary information
> that has been elicited, and that that information led to the conclusion that
> I described yesterday on the phone. I would love to be able to provide you

> with more specificity and to go on the record about this, but I am governed
> by the constraints that I described yesterday, which are not of our making.
>
> Thank you for allowing us to communicate with you about this matter and for
> considering this information.

>
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> On Sun, Mar 4, 2018 at 4:42 PM, Katie Benner <katie.benner@nytimes.com>
> wrote:

>>
>> Thank you so much Barry!

>>
>> Sent from my iTypo

>>
>> > On Mar 4, 2018, at 4:35 PM, Barry Coburn <barry@coburngreenbaum.com>
>> > wrote:

>> >
>> > Hello Ms. Benner -- Thank you for talking with me just now. I'm
>> > confirming that your deadline is Tuesday at 5 pm. I'll be back to you
>> > shortly. Best regards, Barry

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